



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

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November 6, 2009

Ms. Robin Mills, Chief  
Directorate of Public Works  
318 Cornog Lane  
Fort Monroe, Virginia 23651

RE: Draft Environmental Impact Statement and Federal Consistency Determination for the BRAC 2005 Disposal and Reuse of Fort Monroe, City of Hampton, Virginia (DEQ 09-187F).

Dear Ms. Mills:

The Commonwealth of Virginia has completed its review of the August 2009 Draft Environmental Impact Statement (DEIS) (received September 10, 2009) and October 2009 Federal Consistency Determination (FCD) (received October 2, 2009) for the BRAC 2005 Disposal and Reuse of Fort Monroe, located in the City of Hampton, Virginia. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. DEQ is also responsible for coordinating Virginia's review of FCDs submitted pursuant to the Coastal Zone Management Act (CZMA) and providing the state's response. The following agencies, locality and planning district commission participated in the review of the EA and FCD for this proposal:

Department of Environmental Quality  
Department of Conservation and Recreation  
Department of Game and Inland Fisheries  
Virginia Marine Resources Commission  
Department of Agriculture and Consumer Services  
Department of Health  
Department of Mines, Minerals and Energy  
Department of Historic Resources  
Department of Transportation  
City of Hampton  
Hampton Roads Planning District Commission

The Department of Forestry and Virginia Institute of Marine Science were also invited to comment on the proposal.

## PROJECT DESCRIPTION

The Department of the Army at Fort Monroe, in conformance with the provisions of the Defense Base Closure and Realignment Act of 1990 (Base Closure Act), Public Law 101-510 as amended and the recommendation of the 2005 Base Closure and Realignment (BRAC) Commission, intends to close Fort Monroe. The BRAC Commission's recommendation became binding on November 9, 2005, therefore making surplus to the Army the non-reverting property at Fort Monroe. Under the Base Closure Act, all Army missions at Fort Monroe must cease or be relocated and the Army's excess real property interests at Fort Monroe will be disposed of and transferred to new owners according to all applicable laws, regulations, and national policy. Closure is required by no later than September 15, 2011.

The Army has submitted a Draft Environmental Impact Statement (DEIS) that evaluates the environmental and socioeconomic impacts of closing the installation and disposing of the 570-acre federal fee-owned property and considers reasonable reuse alternatives. The DEIS also considers the cumulative impacts of potential reuses of approximately 290 acres of the property that will revert to the Commonwealth of Virginia according to deed provisions established when the Army was granted ownership of the property.

### Disposal Alternatives for Non-reverting Property

For non-reverting property, the Army has identified two disposal alternatives (early transfer and traditional), a caretaker status alternative, and a no action alternative.

- **Early transfer alternative**-the Army would utilize various property transfer and disposal methods that allow for reuse before environmental remedial action has been completed.
- **Traditional disposal alternative**-the Army would transfer or dispose of property once environmental remediation is completed for individual parcels of the installation.
- **Caretaker status alternative**-would arise in the event the Army is unable to dispose of any or all portions of the non-reverting property within the period of initial maintenance.
- **No action alternative**-the Army would continue operations at Fort Monroe at levels similar to those occurring prior to the 2005 BRAC Commission's recommendation for closure.

## Reuse Alternatives

Three reuse scenarios, based on a range of redevelopment intensities, encompass the Fort Monroe Federal Area Development Authority (FMFADA) Reuse Plan and are evaluated as secondary actions. The DEIS addresses reuse of all property on Fort Monroe, including property that will revert to the Commonwealth of Virginia as part of the plan for reuse. Three separate levels of intensity for the reuse of Fort Monroe are analyzed, including a Lower Bracket, Middle Bracket, and Upper Bracket.

- **Middle Bracket**-considered to be commensurate with long-term build-out of the FMFADA Reuse Plan.
- **Lower Bracket**- commensurate with a recreational tourism destination (e.g., beaches, open space, military museums, historic structures, accommodations, and amenities), with reduced employment and limited changes to existing structures as compared to current conditions.
- **Upper Bracket**-similar to the FMFADA Reuse Plan, but with higher residential and commercial development than what is assumed for the Middle Bracket scenario.

## CONCLUSION

Based on the information provided in the DEIS and comments from reviewers, the Commonwealth of Virginia has no objection to the proposal as presented, provided the Army complies with all applicable laws and regulations.

Water quality and wetland impacts will require authorization by DEQ under the Virginia Water Protection Permit Program. Erosion and sediment control, stormwater management and impacts to Chesapeake Bay Preservation Areas will require review by the Department of Conservation and Recreation or the City of Hampton depending upon whether land-disturbing activities are a result of federal, state or private development. Impacts to state subaqueous lands fall under the authority of the Virginia Marine Resources Commission. Disposal and reuse activities should be coordinated with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and the Virginia Department of Game and Inland Fisheries to ensure the protection of federally- and state-listed marine mammals, sea turtles and avian species. Activities must be conducted in accordance with the Programmatic Agreement for the treatment of historic resources between the Army, Virginia Department of Historic Resources, Advisory Council on Historic Preservation, Fort Monroe Federal Area Development Authority, the Commonwealth and the National Park Service.

Provided activities are performed in accordance with the recommendations which follow, this project is unlikely to have significant effects on ambient air quality, water quality,

important farmland, wetlands, wildlife, historic resources or forest resources. It will not affect species of plants, animals, or insects listed by state agencies as rare, threatened, or endangered.

## **ENVIRONMENTAL IMPACTS AND MITIGATION**

**1. Water Quality & Wetlands.** According to the DEIS (page ES-7), there would be a range of minor adverse effects and minor beneficial effects to water resources including surface water quality under the disposal and reuse alternatives. Also, there would be a range of moderate adverse effects and minor beneficial effects to biological resources, including wetlands, associated with the disposal and reuse alternatives.

**1(a) Agency Jurisdiction.** The State Water Control Board (SWCB) promulgates Virginia's water regulations, covering a variety of permits to include Virginia Pollutant Discharge Elimination System (VPDES) Permit, Virginia Pollution Abatement Permit, Surface and Groundwater Withdrawal Permit, and the Virginia Water Protection Permit (VWPP). The VWPP is a state permit which governs wetlands, surface water, and surface water withdrawals/impoundments. It also serves as § 401 certification of the federal *Clean Water Act* § 404 permits for dredge and fill activities in waters of the U.S. The VWPP Program is under the Office of Wetlands and Water Protection/Compliance, within the DEQ Division of Water Quality Programs. In addition to central office staff that review and issue VWP permits for transportation and water withdrawal projects, the seven DEQ regional offices perform permit application reviews and issue permits for the covered activities.

**1(b) Agency Comments.** The DEQ Office of Wetlands and Water Protection (OWWP) responded directly (October 26, 2009 letter, attached) to the Army's request for comments on the DEIS. Comments from DEQ-OWWP are summarized and included in the following discussion.

### ***Virginia Water Protection Permit***

DEQ's Tidewater Regional Office (TRO) notes that the DEIS clearly identifies the presence of surface water and wetland resources on Fort Monroe which may be affected as a result of redevelopment or reuse of this facility in the future. While the document (page 4-85) addresses compliance with Section 404 of the Clean Water Act via consultation with the U.S. Army Corps of Engineers (Corps), it makes no reference to compliance with state surface water and wetland requirements under the VWPP that are independent of Section 404 and may be more encompassing both spatially and with respect to regulated activities (i.e. isolated wetlands, excavation, etc.).

### ***Comprehensive Environmental Response, Compensation and Liability Act***

According to DEQ-OWWP, the areas of the project that fall under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) do not require a VWPP.

### ***Resource Conservation and Recovery Act***

According to DEQ-OWWP, the areas of the project under the authority of the Resource Conservation and Recovery Act (RCRA) may require a VWPP for potential impacts to surface waters, including wetlands.

**1(c) Recommendations.** DEQ-TRO recommends that the FEIS should clarify that DEQ will be included in any coordination and subsequent permitting determinations regarding impacts to surface waters, including wetlands as defined in state law.

DEQ-OWWP recommends that the Army coordinate with the Department of Game and Inland Fisheries as well as the Department of Conservation and Recreation and/or the U.S. Fish and Wildlife Service regarding presence of endangered or threatened species and/or habitat, prior to seeking a permit from the DEQ, since state and federal threatened and endangered species have been identified in the proximity of the project.

In general, DEQ recommends that stream and wetland impacts be avoided to the maximum extent practicable. To minimize unavoidable impacts to wetlands and waterways, DEQ recommends the following practices:

- Use directional drilling from upland locations for stream crossings, to the extent practicable. If directional drilling is not feasible, stockpile the material excavated from the trench for replacement.
- Consider using a work bridge rather than a causeway to reduce temporary impacts.
- Operate machinery and construction vehicles outside of stream-beds and wetlands; use synthetic mats when in-stream work is unavoidable;
- Construct the trench for the utility line in a manner that does not drain the wetlands (for example, backfilling with extensive gravel layers thereby creating a French drain effect).
- Preserve the top 12 inches of trench material removed from wetlands for use as wetland seed and root-stock in the excavated area.
- Erosion and sedimentation controls should be designed in accordance with the most current edition of the Virginia Erosion and Sediment Control Handbook. These controls should be in place prior to clearing and grading, and maintained in good working order to minimize impacts to state waters. The controls should remain in place until the area is stabilized.

- Monitor construction activities to ensure that erosion and stormwater management practices are adequately preventing sediment and pollutant migration into surface waters, including wetlands.
- Place heavy equipment, located in temporarily impacted wetland areas, on mats, geotextile fabric, or use other suitable measures to minimize soil disturbance, to the maximum extent practicable.
- Restore all temporarily disturbed wetland areas to pre-construction conditions and plant or seed with appropriate wetlands vegetation in accordance with the cover type (emergent, scrub-shrub, or forested). The applicant should take all appropriate measures to promote re-vegetation of these areas. Stabilization and restoration efforts should occur immediately after the temporary disturbance of each wetland area instead of waiting until the entire project has been completed.
- Any temporary impact should be restored to their original contours and revegetated with the same or similar species.
- Place all materials which are temporarily stockpiled in wetlands, designated for use for the immediate stabilization of wetlands, on mats, geotextile fabric in order to prevent entry in State waters. These materials should be managed in a manner that prevents leachates from entering state waters and must be entirely removed within thirty days following completion of that construction activity. The disturbed areas should be returned to their original contours, stabilized within thirty days following removal of the stockpile, and restored to the original vegetated state.
- All non-impacted surface waters within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities should be clearly flagged or marked for the life of the construction activity within that area. The project proponent should notify all contractors that these marked areas are surface waters where no activities are to occur.
- Measures should be employed to prevent spills of fuels or lubricants into state waters.

**1(d) Requirements.** The following is a list of requirements that may be applicable to the proposed disposal and reuse activities:

- A VWPP may be required if state waters, including wetlands, are affected by project activities.
- A wetland delineation must be conducted to determine the location, extent, and type of surface waters present if any construction activities in or near surface waters, including wetlands, result in direct or indirect impacts.
- The JPA must include documentation of all avoidance and minimization efforts and a conceptual plan for appropriate compensatory mitigation.
- Unavoidable impacts to all wetlands greater than 1/10 acre or to streams in excess of three hundred linear feet will require compensation through the purchase of mitigation bank credits or through the creation, enhancement or preservation of

wetlands or streams within the project's watershed.

**2. Subaqueous Lands Management.** According to the DEIS (page 4-83), proposed marina expansion will include disturbance of bottom sediments for construction of up to 5 docks for up to 100 additional boats. The DEIS (page ES-7) concludes that a range of minor adverse effects and minor beneficial effects would impact water resources including subaqueous lands under the disposal and reuse alternatives.

**2(a) Agency Jurisdiction.** The Virginia Marine Resources Commission (VMRC), pursuant to Section 28.2-1204 of the Code of Virginia, has jurisdiction over any encroachments in, on, or over any state-owned rivers, streams, or creeks in the Commonwealth. For any development that involves encroachments channelward of ordinary high water along natural rivers and streams, a permit is required from VMRC.

The VMRC serves as the clearinghouse for the Joint Permit Application used by the:

- VMRC for encroachments on or over state-owned subaqueous beds as well as tidal wetlands;
- U.S. Army Corps of Engineers (Corps) for issuing permits pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act;
- DEQ for issuance of a Virginia Water Protection Permit; and
- local wetlands board for impacts to wetlands.

**2(b) Conclusion.** According to VMRC, if any portion of the disposal and reuse activities involves encroachments channelward of ordinary high water along natural rivers and streams, a permit may be required from the VMRC.

**3. Erosion and Sediment Control, and Stormwater Management.** According to the DEIS (page 4-56), disposal of Fort Monroe will ultimately lead to limited demolition, site-clearing, and construction activities that could result in increases in erosion potential. Based on an analysis of conceptual development plans from the Reuse Plan (FMFADA 2008), aerial photography analysis, and building metrics, up to 100 acres may ultimately be disturbed from redevelopment, spread over the course of 20 years. The *Virginia Erosion and Sediment Control Handbook* (published by the Virginia Department of Conservation and Recreation) provides guidance for all state erosion and sediment control programs. It covers basic concepts, design, installation, maintenance, plan review procedures, and administrative guidelines to support compliance with the *Virginia Erosion and Sediment Control Law and Regulations*.

**3(a) Agency Jurisdiction.** DCR's Division of Soil and Water conservation administers the *Virginia Erosion and Sediment Control Law and Regulations (VESCL&R)* and

*Virginia Stormwater Management Law and Regulations (VSWML&R).*

**3(b) Erosion and Sediment Control Plan.**

**(i) *Lands Under Federal Management***

According to the Department of Conservation and Recreation (DCR), the Army and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with *VESCL&R*, *VSWML&R* including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbing activities that result in the land disturbance of equal to or greater than 2,500 square feet in a Chesapeake Bay Preservation Area (CBPA) would be regulated by *VESCL&R*. Accordingly, the applicant must prepare and implement an erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. The ESC plan is submitted to the DCR Regional Office that serves the area where the project is located for review for compliance. The Army is ultimately responsible for achieving project compliance through oversight of on site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy. [Reference: *VESCL* §10.1-567]

**(ii) *Lands Under Local Management***

The property owner is responsible for submitting a project-specific erosion and sediment control (ESC) plan to the City of Hampton for review and approval pursuant to the local ESC requirements, if the project involves a land-disturbing activity of greater than 2,500 square feet in a CBPA. Depending on local requirements the area of land-disturbance requiring an ESC plan may be less. The ESC plan must be approved by the locality prior to any land-disturbing activity at the project site. All regulated land-disturbing activities associated with the project, including on and off site access roads, staging areas, borrow areas, stockpiles, and soil intentionally transported from the project must be covered by the project specific ESC plan. Local ESC program requirements must be requested through the City of Hampton. [Reference: *Virginia Erosion and Sediment Control Law* §10.1-563; *Virginia Erosion and Sediment Control Regulations* 4 VAC 50-30-30 and 4 VAC 50-30-40]



### **3(c) Stormwater Management Plan.**

#### **(i) *Lands Under Federal Management***

The Army must comply with the *Virginia Stormwater Management Law and Regulations* and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, Federal Consistency under the Coastal Zone Management Act) for construction activities on federal property. Stormwater management plans are submitted to the DCR Regional Office that serves the area where the project is located for review for compliance. [Reference: *Virginia Stormwater Management Act* §10.1-603.3; *Virginia Stormwater Management Program (VSMP) Permit Regulations* 4 VAC 50-60-110].

#### **(ii) *Lands Under Local Management***

Dependent on local requirements, a Stormwater Management (SWM) plan may be required. Local SWM program requirements must be requested through the City of Hampton. [Reference: *Virginia Stormwater Management Act* §10.1-603.3; and *Virginia Stormwater Management (VSMP) Permit Regulations* 4 VAC 50-60-110]

**3(d) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities.** DCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.

#### **(i) *Lands Under Federal Management***

The operator or owner of construction activities involving land-disturbing activities equal to or greater than 2,500 square feet in areas analogous to the *Chesapeake Bay Preservation Area Designation and Management Regulations* adopted pursuant to the *Chesapeake Bay Preservation Act* are required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project specific stormwater pollution prevention plan (SWPPP). The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit and the SWPPP must address water quality and quantity in accordance with the Virginia Stormwater Management Program (VSMP) Permit Regulations.

(ii) ***Lands Under Local Management***

The operator or owner of construction activities involving land disturbing activities greater than 2,500 square feet are required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project specific stormwater pollution prevention plan (SWPPP). Construction activities requiring registration also includes the land-disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development will ultimately disturb equal to or greater than one acre. The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit and the SWPPP must address water quality and quantity in accordance with the Virginia Stormwater Management Program (VSMP) Permit Regulations.

General information and registration forms for the General Permit are available on DCR's website at: [http://www.dcr.virginia.gov/soil\\_and\\_water/vsmp.shtml](http://www.dcr.virginia.gov/soil_and_water/vsmp.shtml). [Reference: *Virginia Stormwater Management Act* §10.1-603.1 *et seq.*; *VSMP Permit Regulations* 4 VAC-50 *et seq.*]

**4. Chesapeake Bay Preservation Areas.** According to the DEIS (page 4-80), Resource Protections Areas (RPAs) have been established as a 100 foot buffer zone along the boundary of Fort Monroe. In general, most development is not permitted within the RPA, although there are some types of development that are exempt (e.g., water dependent activities such as a marina, docks, piers; certain types of redevelopment). In addition, there are administrative procedures for considering encroachment waivers within the RPA, which are administered and reviewed by local boards that manage the RPAs. Such restrictions and procedures apply to both baseline conditions under which Fort Monroe currently operates, as well as future use of the installation by other entities.

**4(a) Agency Jurisdiction.** DCR's Division of Chesapeake Bay Local Assistance (DCBLA) administers the coastal lands management enforceable policy of the VCP which is governed by the *Chesapeake Bay Preservation Act (Bay Act)* (*Virginia Code* §10.1-2100-10.1-2114) and *Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations)* (9 VAC 10-20 *et seq.*).

**4(b) Chesapeake Bay Preservation Areas.** According to DCR-DCBLA, while Chesapeake Bay Preservation Areas (CBPA) are not locally designated on federal lands, federal actions on installations located within Virginia designated coastal zone are required to be consistent with the performance criteria of the *Regulations* (9 VAC 10-20-10 *et seq.*) on lands analogous to locally designated CBPAs.

In the City of Hampton, the areas protected by the *Chesapeake Bay Preservation Act*, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include:

- tidal wetlands;
- certain non-tidal wetlands;
- tidal shores; and
- a 100-foot vegetated buffer area located adjacent to and landward of the aforementioned features, and along both sides of any water body with perennial flow.

In the City of Hampton, the RPA buffer also includes lands designated as part of the Coastal Barrier Resources System under the Federal Coastal Barrier Resources Act.

RMAs in the City of Hampton, which require less stringent performance criteria, include areas within 100 feet of the inland RPA boundary.

**4(c) Performance Criteria.** Land-disturbing activities that occur in RMAs are required to meet the general performance criteria as specified in 9 VAC 10-20-120 *et seq.*, with respect to:

- minimizing land disturbance (including access and staging areas);
- retaining indigenous vegetation; and
- minimizing impervious surface.

Furthermore, for land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion & Sediment Control Handbook*, Third Edition, 1992. Finally, project construction must meet stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Permit Regulations* (4 VAC-50-60-10).

**4(d) Federal Stormwater Management Commitments.** The *1998 Federal Agencies' Chesapeake Ecosystem Unified Plan* requires the signatories to fully cooperate with local and state governments in carrying out voluntary and mandatory actions to comply with the management of stormwater. The agencies also committed to encouraging construction design that:

- (a) minimizes natural area loss on new and rehabilitated federal facilities;
- (b) adopts low impact development and best management technologies for stormwater, sediment and erosion control and reduces impervious surfaces; and

- (c) considers the *Conservation Landscaping and Bay-Scapes Guide for Federal Land Managers*.

In addition, the Chesapeake 2000 Agreement committed the government agencies to a number of sound land use and stormwater quality controls. The signatories additionally committed the agencies to lead by example with respect to controlling nutrient, sediment and chemical contaminant runoff from government properties. In December 2001, the Executive Council of the Chesapeake Bay Program issued Directive No. 01-1, *Managing Storm Water on State, Federal and District-owned Lands and Facilities*, which includes specific commitments for agencies to lead by example with respect to stormwater control.

**4(e) Findings.** Any lands analogous to locally designated CBPAs that might remain federally-owned would remain subject to the requirements in the *Regulations*. Upon transfer, state-held lands and any privately-owned lands would be subject to CBPA designation by the City of Hampton. The proposed reuse alternatives currently include activities such as residential redevelopment, expansion of an existing marina and other uses.

**4(f) Requirements.** Section 10.1-2114 of the *Bay Act* requires all state agencies to exercise their authorities consistent with local comprehensive plans, zoning ordinances, and subdivision ordinances adopted to comply with the *Bay Act* program and the requirements in the *Regulations*.

Any plans that would include land disturbance, development or redevelopment for a location within CBPAs must be consistent with the requirements in the *Regulations*, and if applicable, City of Hampton ordinances. In particular, the requirements of 9 VAC 10-20-130 must be satisfied, including the provisions limiting land development in the RPA to those structures and uses that are water dependent or constitute redevelopment.

**4(g) Conclusion.** DCR-DCBLA concludes that the proposed disposal and reuse alternatives at Fort Monroe are consistent with the requirements of the *Chesapeake Bay Preservation Act* and *Regulations*, provided adherence to the above requirements.

**5. Air Pollution Control.** According to the DEIS (page 4-31), reuse projects could affect air quality in three ways: by generating pollutants during limited demolition and construction; by introducing new stationary sources of pollutants, such as heating boilers and standby generators; and through changes in vehicular traffic that could raise vehicle emission levels locally and possibly regionally. Air quality effects would be considered minor to moderate unless the estimated emissions would not conform to the State Implementation Plan (SIP) or would contribute to a violation of any federal, state, or local air regulations.

**5(a) Agency Jurisdiction.** DEQ's Air Quality Division, on behalf of the State Air Pollution Control Board, is responsible to develop regulations that become Virginia's *Air Pollution Control Law*. DEQ is charged to carry out mandates of the state law and related regulations as well as Virginia's federal obligations under the *Clean Air Act* as amended in 1990. The objective is to protect and enhance public health and quality of life through control and mitigation of air pollution. The division ensures the safety and quality of air in Virginia by monitoring and analyzing air quality data, regulating sources of air pollution, and working with local, state and federal agencies to plan and implement strategies to protect Virginia's air quality. The appropriate regional office is directly responsible for the issue of necessary permits to construct and operate all stationary sources in the region as well as to monitor emissions from these sources for compliance. As a part of this mandate, the environmental documents of new projects to be undertaken in the state are also reviewed. In the case of certain projects, additional evaluation and demonstration must be made under the general conformity provisions of state and federal law.

**5(b) Agency Comments.**

(i) ***National Ambient Air Quality Standards Attainment Status***

According to the DEQ Air Division, Fort Monroe is located in the Hampton Roads ozone (O<sub>3</sub>) maintenance area and an emission control area for the contributors to ozone pollution, which are volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>). Therefore, for activities related to the disposal and reuse alternatives, all reasonable precautions should be undertaken to limit emissions of VOCs and NO<sub>x</sub>, principally by controlling or limiting the burning of fossil fuels.

(ii) ***General Conformity Determination***

The DEQ Air Division concurs with the finding in the DEIS that a general conformity determination (GCD) for this action is not required based on the emission analysis contained in the document. Anticipated air emissions during the construction or completion phases are below the GCD threshold of 100 tons per year established for the Hampton Roads area as a maintenance area under the 1997 ozone standard.

(iii) ***Best Management Practices***

The DEQ Air Division supports the best management practices (BMPs) listed in the DEIS (page 4-37), that will be required for construction.

## **5(c) Requirements.**

### **(i) Asphalt Paving Operations**

There are some limitations on the use of “cut-back” (liquefied asphalt cement, blended with petroleum solvents) stemming from 9 VAC 5-40-5490 in the *Regulations for the Control and Abatement of Air Pollution* that may apply to the disposal and reuse alternatives. The asphalt must be “emulsified” (predominantly cement and water with a small amount of emulsifying agent) except when specified circumstances apply. Moreover, there are time-of-year restrictions on its use during the months of April through October in VOC emission control areas.

### **(ii) Fugitive Dust**

During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

### **(iii) Open Burning**

If disposal and reuse activities include the burning of construction or demolition material, this activity must meet the requirements under 9 VAC 5-130 *et seq.* of the *Regulations* for open burning, and it may require a permit. The *Regulations* for open burning provide for, but do not require, the local adoption of a model ordinance concerning open burning. The City of Hampton local requirements (if any exist) would apply to future open burning activities.

**6. Solid and Hazardous Wastes and Hazardous Materials.** The DEIS (page 4-151) states that Fort Monroe does not operate as a transporter or disposal/treatment facility of hazardous wastes. Wastes are transported off-site for disposal. A private collector collects all solid waste, and no active landfills are located on the installation.

**6(a) Agency Comments.** DEQ’s Waste Division finds that both solid and hazardous waste issues and sites were addressed in the report. The report includes a search of

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waste-related data bases. A geographic information system (GIS) database search did

not reveal any waste sites within a half mile radius that would impact or be impacted by project activities.

**6(b) Data File Search.** The Waste Division performed a cursory review of DEQ data files and determined that there is one hazardous waste site (VA5210020603, Department of the Army-Ft. Monroe, VA, large quantity generator) and one formerly used defense site (FUDS) (C03VA0103, VA9799F1583, Ft. Monroe/Ft. Wool area, Hampton) located within the same zip code, however their proximity to the subject site is unknown.

**6(c) Waste Management.** Any soil that is suspected of contamination or wastes that are generated during construction-related activities must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations. All demolition and construction waste, including excess soil, must be characterized in accordance with the *Virginia Hazardous Waste Management Regulations* prior to disposal at an appropriate off-site facility.

**6(d) Asbestos-containing Material and Lead-based Paint.** All structures being demolished or removed, should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, state regulations 9 VAC 20-80-640 for ACM and 9 VAC 20-60-261 for LBP must be followed.

**6(e) Recommendations.** The DEQ Office of Remediation Programs (ORP), Federal Facilities Program (FFP) offers the following recommended changes to the DEIS.

- **Page 4-151, Section 4.13.1.3-**The second paragraph in this section indicates that Dog Beach landfill and the 200 Area landfill are presently IRP sites 01 and 02 respectively. However, these were *formerly* IRP Sites 01 and 02. They are still IRP sites but the number for Area 200 has changed according to the Installation Action Plan (IAP). This section states that although the IAP lists the sites as closed, both sites will be evaluated further from an ecological perspective in a future Ecological Technical Memorandum. This sentence should be clarified to note that Area 200 is also being investigated in the Supplemental Site Inspection (SI) from both a human health and ecological risk perspective. Dog Beach is being investigated in a Remedial Investigation (RI). This will include both a human health and ecological risk assessment.
- **Page 4-153, Section 4.13.1.4-**The last paragraph states that sites are being investigated under either the IRP process or under the CERCLA expanded SI process. However, the SI process is part of the IRP process.



- **Page 153, Section 4.13.1.4-** DEQ has concerns with historic contamination that may have been conveyed to Mill Creek and the Moat via stormwater outfalls. DEQ has recommended multi-media sampling adjacent to these stormwater outfalls.
- **Page 4-154, Table 4.13-3-**Sites currently under investigation should also include: Former Fire Training Pit; Former Rifle Range; Former East Pistol Range; Former Skeet Range; Former Target Range; Former Auto Craft Shop; Lumber Storage Site; Former Wastewater Treatment Plant; Former Gas Station; Former Building 76 Tanks; Post Engineer Shops, Asphalt Plant, and Oil House; and Dog Beach Landfill.
- **Page 4-155, Table 4.13-4-**The status/cleanup for the Battery Range Fans specifies “Outside installation boundary.” This could be construed that nothing will be done under the Fort Monroe program to address them. DEQ’s understanding is that the cleanup of these range fans is being deferred. The Army is responsible for investigation and possible remedial action. Given the desire to transfer the land quickly the focus is currently on terrestrial and near shore munitions. The range fans will be addressed at a later date. The status/cleanup column should be clarified on the table.
- **Page 4-156, Section 4.13.1.4-**The following comment was made in the MMRP section, “Buried MEC items have been found onshore and there is a potential that MEC is present offshore at Fort Monroe, including in the moat surrounding the fort.” The use of the word “potential” in regard to the moat is misleading since MEC has been identified in the moat. Also, this statement conflicts with information provided in the table on page 4-155. The last paragraph in this section states, “For the protection of human health, land use controls, including dig restrictions must remain in place site-wide until the investigation, and if necessary, remediation, of MEC is completed both on- and offshore as well as in all near shore/offshore areas of Fort Monroe that may be used for recreational purposes, including swimming and boating (FMFADA 2008). Dig restrictions and construction support may remain in perpetuity as deed restrictions (Pinkoski 2009).” It should be noted that the cleanup team has agreed that there will be a deed restriction on all Fort Monroe property. The nature of the restriction (i.e. the level of construction support required) will vary by area depending on the results of investigations.
- **Page 4-157, Storage Tanks-**A focus of this section is on regulated underground storage tanks (USTs) and aboveground storage tanks (ASTs). No statement(s) were provided with regard to *unregulated* tanks or tanks that have been closed in-place/abandoned. The document should include information (dates/locations/methods) on tanks that have been abandoned in-place.
- **Page 4-157, Lead and Lead-Based Paint (LBP)-**The section states, “Army policy is to manage LBP in place unless it poses a hazard.” DEQ understands that a Fort Monroe policy prohibits base residents from cultivating/consuming vegetables from

garden areas which are not raised beds. Fort Monroe staff stated that this policy was due to the presence of LBP in area soils around base residences.

- **Page 4-157, Polychlorinated Biphenyls (PCBs)**-Additional investigation of PCBs may be required under the IRP.
- **Page 4-158, Pesticides and Herbicides**-The DEH yard is still under investigation under the IRP.

The DEQ Waste Division also recommends the Army consider the following measures for the disposal and reuse alternatives:

- Access the following web sites for additional information on hazardous waste and FUDS sites listed above using their identification numbers:
  - <http://www.epa.gov/superfund/sites/cursites/index.htm> or
  - [http://oaspub.epa.gov/enviro/ef\\_home2.waste](http://oaspub.epa.gov/enviro/ef_home2.waste)
- Implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated for construction projects and facilities. All generation of hazardous wastes should be minimized and handled appropriately.

**7. Petroleum Storage Tanks.** According to the DEIS (page 4-157), the Fort Monroe historical database shows that 164 current and former petroleum USTs, ranging in capacity from 500 to 15,000 gallons, have been located on the post. The tanks were used for heating fuel, diesel, and gasoline. There are currently 32 active petroleum ASTs ranging from 250 to 30,000 gallons capacity, including six portable tanks that are integral parts of emergency power generators. Five of these tanks are regulated by DEQ because of their size and contents.

**7(a) Petroleum Storage Tank Cleanups.** According to DEQ-TRO, there have been 14 petroleum releases reported at Fort Monroe, all of which are closed cases. Petroleum contaminated soils or groundwater generated during construction of this project must be characterized and disposed of properly.

**7(b) Requirements.** Disposal and reuse activities must comply with the following requirements of the Storage Tank Program.

- The relocation, removal or closure of any regulated aboveground or underground petroleum storage tank(s) must be reported to DEQ TRO.
- If evidence of a petroleum release is discovered during implementation of the project, it must be reported to DEQ-TRO.

- If the construction of this project will include the use of portable ASTs (>660 gallons) for equipment fuel, these tank(s) must be registered with DEQ-TRO using AST Registration form 7540-AST. This form is available at the DEQ web site at [www.deq.virginia.gov](http://www.deq.virginia.gov).

**8. Herbicides and Pesticides.** DEQ recommends that the use of herbicides or pesticides for construction or landscape maintenance should be in accordance with the principles of integrated pest management. The least toxic pesticides that are effective in controlling the target species should be used. Contact the Department of Agriculture and Consumer Services at (804) 786-3501 for more information.

**9. Natural Heritage Resources.** According to the DEIS (page 4-78), a coordination letter was sent to the Department of Conservation and Recreation requesting information on sensitive species known to occur or potentially occurring, on or in the vicinity of Fort Monroe (DEIS, Appendix E).

**9(a) Agency Jurisdiction.** The mission of the Virginia Department of Conservation and Recreation is to conserve Virginia's natural and recreational resources. DCR supports a variety of environmental programs organized within seven divisions including the Division of Natural Heritage. The Natural Heritage Program's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. The *Virginia Natural Area Preserves Act*, 10.1-209 through 217 of the *Code of Virginia*, was passed in 1989 and codified DCR's powers and duties related to statewide biological inventory: maintaining a statewide database for conservation planning and project review, land protection for the conservation of biodiversity, and the protection and ecological management of natural heritage resources (the habitats of rare, threatened, and endangered species, significant natural communities, geologic sites, and other natural features).

**9(b) Agency Findings.** DCR-DNH searched its Biotics Data System for occurrences of natural heritage resources in the project area. Biotics documents the presence of natural heritage resources in the project area. However, due to the scope of the activity and the distance to the resources, DCR-DNH does not anticipate that the proposed disposal and reuse alternatives will adversely impact these natural heritage resources.

**9(c) State-listed Plant and Insect Species.** The *Endangered Plant and Insect Species Act of 1979*, Chapter 39 §3.1-1020 through 1030 of the *Code of Virginia*, as amended, authorizes the Virginia Department of Agriculture and Consumer Services (VDACS) to conserve, protect, and manage endangered and threatened species of plants and insects. The VDACS Virginia Endangered Plant and Insect Species Program personnel cooperates with the U.S. Fish and Wildlife Service (USFWS), DCR-DNH and other

agencies and organizations on the recovery, protection or conservation of listed threatened or endangered species and designated plant and insect species that are rare throughout their worldwide ranges. In those instances where recovery plans, developed by USFWS, are available, adherence to the order and tasks outlined in the plans are followed to the extent possible.

Under a Memorandum of Agreement established between VDACS and DCR, DCR represents VDACS in comments regarding potential impacts on State-listed threatened and endangered plant and insect species. DCR finds that the current activity will not affect any documented State-listed plants or insects. VDACS finds that no listed threatened or endangered plant and insect species are documented to occur in the vicinity of the project area, based on information in VDACS' database. VDACS does not anticipate the proposed action will have significant adverse effects as it relates to its responsibilities for the preservation of and protection of listed endangered and threatened plant and insect species.

**9(d) State Natural Area Preserves.** DCR files do not indicate the presence of any State Natural Area Preserves under the agency's jurisdiction in the project vicinity.

**9(e) Recommendations.** DCR-DNH recommends that DCR-DNH, Rene Hypes at (804) 371-2708 be contacted for an update on natural heritage information if a significant amount of time passes before the proposed action is initiated since new and updated information is continually added to Biotics.

**10. Wildlife Resources and Protected Species.** According to the DEIS (page 4-78), a coordination letter was sent to the Department of Game and Inland Fisheries requesting information on state-listed threatened, endangered, or candidate species known to occur or potentially occurring, on or in the vicinity of Fort Monroe (DEIS, Appendix E).

**10(a) Agency Jurisdiction.** The Department of Game and Inland Fisheries (DGIF), as the Commonwealth's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over wildlife and freshwater fish, including state or federally listed endangered or threatened species, but excluding listed insects (*Virginia Code* Title 29.1). The DGIF is a consulting agency under the *U.S. Fish and Wildlife Coordination Act* (16 U.S.C. sections 661 *et seq.*), and provides environmental analysis of projects or permit applications coordinated through DEQ and several other state and federal agencies. DGIF determines likely impacts upon fish and wildlife resources and habitat, and recommends appropriate measures to avoid, reduce, or compensate for those impacts.

**10(b) Agency Comments.** DGIF offers the following information on species under its

jurisdiction found in the area of Fort Monroe.

(i) ***Listed Sea Turtles***

According to DGIF records, the federally-listed endangered Kemp's Ridley sea turtle and leatherback sea turtle, and federally-listed threatened loggerhead sea turtle have been documented from the project area. However, these records appear to be stranding records and do not represent nesting sites. These turtles are known to inhabit Virginia's coastal areas and waters from May 15 through October 31 of any year. It does not appear that any of the proposed closure/disposal actions are likely to impact these species.

(ii) ***Listed Avian Species***

DGIF documents the state-listed threatened peregrine falcon, gull-billed tern and bald eagle, and the federally-listed threatened piping plover from Fort Monroe. However these records appear to be the result of a visual and auditory survey performed by the U.S. Fish and Wildlife Service (USFWS) on site and do not represent nesting locations. Therefore, DGIF does not anticipate any of the proposed alternatives will result in adverse impacts upon these listed species.

(iii) ***Anadromous Fish Use Area***

The James River has been designated an Anadromous Fish Use Area. Based on the location of Fort Monroe in relation to the designated river reach, DGIF does not anticipate that any of the proposed actions will result in adverse impacts upon this resource.

(iv) ***Colonial Waterbird Colony***

DGIF documents a colonial waterbird colony at the southern tip of Fort Monroe and on the Hampton Roads Bridge Tunnel. DGIF does not anticipate the proposed actions to impact this resource.

**10(c) Recommendations.** DGIF recommends the following:

- coordinate with the USFWS regarding the protection of federally-listed avian species;
- coordinate with the USFWS and National Marine Fisheries Service (NMFS) regarding the protection of federally-listed sea turtles; and
- coordinate all future development of this site with DGIF and the USFWS to ensure the protection of listed species known from the general project area.

**10(d) Conclusion.** DGIF concludes that it is difficult at this time to make any determination about what, if any impacts, may be associated with future development or use of the site as final decisions about what the use might be have not been made. However, assuming adherence to strict erosion and sediment controls during demolition or ground disturbance, DGIF finds the proposal consistent with the fisheries management enforceable policy of the Virginia Coastal Resources Management Program under its jurisdiction.

Contact Amy Ewing, DGIF at (804) 367-2733, for additional information regarding these comments.

## **11. Shellfish Resources.**

**11(a) Agency Jurisdiction.** The Virginia Department of Health's (VDH) Division of Shellfish Sanitation (DSS) is responsible for protecting the health of the consumers of molluscan shellfish and crustacea by ensuring that shellfish growing waters are properly classified for harvesting, and that molluscan shellfish and crustacea processing facilities meet sanitation standards. The mission of this Division is to minimize the risk of disease from molluscan shellfish and crustacea products at the wholesale level by classifying shellfish waters for safe commercial and recreational harvest; by implementing a statewide regulatory inspection program for commercial processors and shippers; and by providing technical guidance and assistance to the shellfish and crustacea industries regarding technical and public health issues.

**11(b) Agency Comments.** VDH-DSS notes that the shellfish beds in the waters of Hampton Roads and Mill Creek at Fort Monroe are currently classified as "condemned." However, the shellfish beds in the waters on the Chesapeake Bay side of the base are classified as "approved." Therefore, shellfish may be harvested for direct marketing or relay in the waters of the Chesapeake Bay at Fort Monroe, but not from the waters of Hampton Roads and Mill Creek.

**11(c) Agency Findings.** VDH-DSS finds that the disposal and reuse alternatives would have minimal, if any, effect on the approved waters to the east (Chesapeake Bay), while waters to the west (Mill Creek and Hampton Roads) are presently condemned to shellfish harvesting per administrative action.

**11(d) Agency Conclusion.** VDH-DSS would not oppose the federal action for the disposal and reuse of Fort Monroe.

Contact Keith Skiles, VDH-DSS at (804) 864-7479 for additional information.

**12. Geologic and Mineral Resources.** According to the DEIS (page 4-55) Fort Monroe lies on the mid-Atlantic coastal plain in a region where geology is influenced by the Eocene-epoch impact crater. Fort Monroe is situated at the outer rim of the crater on approximately 568 acres of marine terrace. At approximately 1,000 feet below the surface is the upper layer of the debris from the impact that fell back into the open crater. Above that lie the sedimentary layers that have been deposited over the ensuing millennia. The DEIS does not indicate that the proposed disposal and reuse alternatives would significantly impact geologic and mineral resources.

**12(a) Agency Jurisdiction.** The mission of the Department of Mines, Minerals and Energy (DMME), Division of Mineral Resources (DMR) is to enhance the development and conservation of energy and mineral resources in a safe and environmentally sound manner to support a more productive economy in Virginia. Serving as Virginia's geological survey, DMME-DMR generates, collects, compiles, and evaluates geologic data, creates and publishes geologic maps and reports, works cooperatively with other state and federal agencies, and is the primary source of information on geology, mineral and energy resources, and geologic hazards for both the mineral and energy industries and the general public. DMME-DMR also provides the necessary geologic support for those divisions of DMME that regulate the permitting of new mineral and fuel extraction sites, miner safety, and land reclamation.

**12(b) Conclusion.** DMME anticipates that the proposed action would have no significant impact to mineral resources.

For additional information, contact Matt Heller, DMME at (434) 951-6351.

**13. Transportation Impacts.** According to the DEIS (page 4-126), the affected transportation environment includes the roadway network internal to Fort Monroe and the external street network in the City of Hampton. Within the city limits, the primary roadways of concern in the Phoebus community are along Mallory Street between I-64 and Mercury Boulevard. There are three main roadways at the south gate entrance to Fort Monroe, McNair Drive, Ingalls Road, and Stillwell Drive. There are also two other major collector roads which traverse the fort, Fenwick Road and Patch Road. Additionally, there are many local neighborhood streets forming the internal roadway network. The document (page ES-7), anticipates mostly a range of minor to significant adverse effects to transportation under the disposal and reuse alternatives.

**13(a) Agency Jurisdiction.** The Virginia Department of Transportation (VDOT) provides comments pertaining to potential impacts to existing and future transportation systems.

**13(b) Agency Comments.** VDOT responded directly to the Army on the DEIS for the disposal and reuse of Fort Monroe in an October 22, 2009 letter (attached). In summary, VDOT is concerned that some of the previous comments provided to the Army in a November 4, 2008 letter from the Virginia Secretary of Transportation and a January 9, 2009 letter from the VDOT Hampton Roads District Administrator have not been satisfactorily addressed in the DEIS. Those comments address the need to discuss alternate transportation modes, the development of a Transportation Demand Management Plan, an analysis of I-64 impacts and the development of an internal



residential capture rate. The VDOT response also includes specific questions on figures, tables, appendices and data contained the DEIS traffic study.

For more information, contact Melanie Allen, VDOT at (804) 786-5360.

**14. Water Supply.** The DEIS (page 4-139) states that water is supplied to Fort Monroe by the Newport News Water Works (NNWW). The document (page 4-145) concludes that although infrastructure is reported to be in generally good condition, long-term redevelopment of Fort Monroe will require some upgrades to existing systems as well as extensions to redevelopment areas for water infrastructure.

**14(a) Agency Jurisdiction.** The Virginia Department of Health (VDH), Office of Drinking Water (ODW) reviews projects for the potential to impact public drinking water sources (groundwater wells, springs and surface water intakes).

**14(b) Agency Findings.** VDH finds that there are no groundwater sources within one mile of the project site and no surface water sources within five miles. The project site is not located in Zone 1 or Zone 2 of any public surface water sources. For public surface water intakes Zone 1 is the area included within a 5-mile radius around the surface water intake and Zone 2 is the entire up-gradient area of the watershed. For public groundwater wells Zone 1 is an area included within a 1,000-foot radius the well and Zone 2 is a radius of one mile. VDH-ODW finds that there are no anticipated impacts to public drinking water resources as a result of the project.

**14(c) Requirement.** Potential impacts to public water distribution systems must be verified with the local utility.

Contact Diedre Forsgren, VDH at (804) 864-7241 for additional information.

**15. Wastewater Treatment Systems.** According to the DEIS (page 4-141), in November 2008, the City of Hampton Wastewater Department performed a cursory inspection of the wastewater collection system components at Fort Monroe that focused on a review of manhole structures and pumping stations. The city determined that a more detailed study of the manhole structures and pumping stations needs to be performed and that a closed-circuit video inspection of at least several sanitary sewer mains is also necessary. These studies, although not yet scheduled, are intended to better understand the condition of these system components as it considers providing operation and maintenance services to the FMFADA for these systems.

**15(a) Discharging Sewer System Regulations.** Installation of sanitary sewer lines must comply with the State's Sewerage Regulations. DEQ has approval authority over plans

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and specifications for most discharging sewage collection systems and treatment

works, except for single family home (<1000 gpd) systems. This authority is contained in the Sewage Collection and Treatment (SCAT) Regulations (12 VAC 5-581).

**15(b) Recommendation.** Contact DEQ's Tidewater Regional Office concerning the construction of the new facilities.

**15(c) Requirement.** Potential impacts to sanitary sewage collection systems must be verified by the local utility.

**16 Historic Structures and Archaeological Resources.** According to the DEIS (page 4-98), the Virginia State Historic Preservation Office (SHPO) has been sent a letter describing this proposed BRAC action. In addition, a Programmatic Agreement (PA) was finalized in March 2009. The signatories are the Virginia SHPO, the Advisory Council on Historic Preservation (ACHP), the Commonwealth of Virginia, the FMFADA, and National Park Service (NPS). Much of the PA concerns repair, maintenance, or other alteration of buildings, structures, or landscapes considered to be contributing elements to the National Historic Landmark (NHL) District. The PA also directs the Army to: complete a viewshed analysis to identify significant viewsheds from and toward the NHL; complete draft National Register of Historic Places (NRHP) nomination forms as required; complete a Cultural Landscape Study; revise the NHL District boundaries; conduct additional archaeological testing as stated in the PA, and additional tasks.

**16(a) Agency Jurisdiction.** The Department of Historic Resources (DHR) conducts reviews of projects to determine their effect on historic structures or cultural resources under its jurisdiction. DHR, as the designated State's Historic Preservation Office (SHPO), ensures that federal actions comply with Section 106 of the *National Historic Preservation Act of 1966 (NHPA)*, as amended, and its implementing regulation at 36 CFR Part 800. The *NHPA* requires federal agencies to consider the effects of federal projects on properties that are listed or eligible for listing on the National Register of Historic Places. Section 106 also applies if there are any federal involvements, such as licenses, permits, approvals or funding.

**16(b) Agency Comments.** DHR concurs that the Army has entered into a Programmatic Agreement with the DHR, Advisory Council, FMFADA, the Commonwealth and NPS for the disposal of Fort Monroe.

**16(c) Conclusion.** DHR concludes that, other than fulfilling the terms of the PA, the *Section 106* process for the undertaking is complete.

## **17. Local Review.**

**17(a) Agency Jurisdiction.** In accordance with CFR 930, Subpart A, § 930.6(b) of the *Federal Consistency Regulations*, DEQ, on behalf of the state, is responsible for securing necessary review and comment from other state agencies, the public, regional government agencies, and local government agencies, in determining the Commonwealth's concurrence or objection to a federal consistency certification.

**17(b) Local Comments.** The City of Hampton responded directly to the Army on the DEIS for the disposal and reuse of Fort Monroe. The city finds that the draft document appears to have both the comprehensive scope and a sufficient level of detail to provide a thorough assessment of the Army's pending disposal of the property and the plans for reuse as envisioned by the Fort Monroe Federal Area Development Authority. The city notes the significant economic, historical, and cultural presence of Fort Monroe within the nearby community, the city and the Hampton Roads region.

The city's comments are attached, and primarily address anticipated transportation impacts of the proposal.

Contact James Oliver, Hampton City Manager at (757) 727-6392 for additional information.

## **18. Regional Planning Area.**

**18(a) Agency Jurisdiction.** In accordance with the Code of Virginia, Section 15.2-4207, planning district commissions encourage and facilitate local government cooperation and state-local cooperation in addressing, on a regional basis, problems of greater than local significance. The cooperation resulting from this is intended to facilitate the recognition and analysis of regional opportunities and take account of regional influences in planning and implementing public policies and services. Planning district commissions promote the orderly and efficient development of the physical, social and economic elements of the districts by planning, and encouraging and assisting localities to plan, for the future.

**18(b) Agency Comments.** The Hampton Roads Planning District Commission (HRPDC) reviewed the DEIS and contacted the City of Hampton. According the HRPDC, some of the modifications proposed by the FMFADA include the potential expansion of the existing marina, alterations to entrances, and other projects that may require additional review for impacts to coastal lands, wetlands or other issues. However, the proposed transfer of Fort Monroe appears to be consistent with local and regional plans and policies. HRPDC supports efforts to maintain the historic fort and to provide opportunities for public access. HRPDC also encourages adherence to the

Secretary of Interior's Standards for Rehabilitation for projects that will include adaptive reuse of historic buildings within and outside of the fort.

For additional information contact Dwight Farmer, HRPDC at (757) 420-8300.

**19. Pollution Prevention.** DEQ advocates that principles of pollution prevention be used in all construction projects as well as in facility operations. Effective siting, planning, and on-site Best Management Practices (BMPs) will help to ensure that environmental impacts are minimized. However, pollution prevention techniques also include decisions related to construction materials, design, and operational procedures that will facilitate the reduction of wastes at the source.

**19(a) Recommendations.** We have several pollution prevention recommendations that may be helpful in future construction projects and in the operation of facilities:

- Consider development of an effective Environmental Management System (EMS). An effective EMS ensures that facilities are committed to minimizing environmental impacts, setting environmental goals, and achieving improvements in its environmental performance. DEQ offers EMS development assistance and it recognizes facilities with effective Environmental Management Systems through its Virginia Environmental Excellence Program.
- Consider environmental attributes when purchasing materials. For example, the extent of recycled material content, toxicity level, and amount of packaging should be considered and can be specified in purchasing contracts.
- Consider contractors' commitment to the environment (such as an EMS) when choosing contractors. Specifications regarding raw materials and construction practices can be included in contract documents and requests for proposals.
- Choose sustainable materials and practices for infrastructure construction and design. These could include asphalt and concrete containing recycled materials, and integrated pest management in landscaping, among other things.
- Integrate pollution prevention techniques into the facility maintenance and operation, to include the following: inventory control (record-keeping and centralized storage for hazardous materials), product substitution (use of non-toxic cleaners), and source reduction (fixing leaks, energy-efficient HVAC and equipment). Maintenance facilities should be designed with sufficient and suitable space to allow for effective inventory control and preventative maintenance.

DEQ's Office of Pollution Prevention provides information and technical assistance relating to pollution prevention techniques and EMS. For more information, contact DEQ's Office of Pollution Prevention, Sharon Baxter at (804) 698-4344.

**20. Energy Conservation.** Future construction should be planned and designed to comply with state and federal guidelines and industry standards for energy conservation and efficiency. For example, the energy efficiency of the facility can be enhanced by maximizing the use of the following:

- thermally-efficient building shell components (roof, wall, floor, windows, and insulation);
- facility siting and orientation with consideration towards natural lighting and solar loads
- high efficiency heating, ventilation, air conditioning systems;
- high efficiency lighting systems and daylighting techniques; and
- energy-efficient office and data processing equipment.

Please contact Matt Heller, Department of Mines, Minerals, and Energy at (434) 951-6351 for additional information.

**21. Water Conservation.** The following recommendations will result in reduced water use.

- Grounds should be landscaped with hardy native plant species to conserve water as well as lessen the need to use fertilizers and pesticides.
- Convert turf to low water-use landscaping such as drought resistant grass, plants, shrubs and trees.
- Low-flow toilets should be installed in new facilities. Otherwise, offset older toilets with a plastic jug of pebbles and water to minimize flushing.
- Consider installing low flow restrictors and aerators to faucets.
- Improve irrigation practices by:
  - upgrading sprinkler clock; water at night, if possible, to reduce evapotranspiration (lawns need only 1 inch of water per week, and do not need to be watered daily; overwatering causes 85% of turf problems);
  - installing a rain shutoff device; and
  - collecting rainwater with a rain bucket or cistern system with drip lines.
- Consider replacement of old equipment such as washers and dishwashers with new high-efficiency machines to reduce water useage by 30-50% per use.
- Check for and repair leaks (toilets and faucets) during regular routine maintenance activities.

## **FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT**

Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities located inside or outside of Virginia's designated coastal management area that can have

reasonably foreseeable effects on coastal resources or coastal uses must, to the maximum extent practicable, be implemented in a manner consistent with the Virginia Coastal Resources Management Program (VCP) (also called the Virginia Coastal Zone Management Program). The VCP consists of a network of programs administered by several agencies. The DEQ coordinates the review of federal consistency determinations with agencies administering the Enforceable and Advisory Policies of the VCP. A federal consistency determination for the proposed action was submitted on October 2, 2009 and includes an analysis of the enforceable policies and the advisory policies of the VCP.

### **Federal Consistency Public Participation**

In accordance with 15 CFR § 930.2, public notice of the proposed action was published on DEQ's web site from October 9, 2009 to October 30, 2009. No public comments were received in response to the notice.

### **Federal Consistency Concurrence**

Based on our review of the Army's consistency determination, and the comments and recommendations submitted by agencies administering the enforceable policies of the VCP, DEQ concurs that this proposal is consistent with the VCP. However, other state approvals which may apply to this project are not included in this concurrence. Therefore, the Army must ensure that this project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

## **REGULATORY AND COORDINATION NEEDS**

**1. Water Quality and Wetland Impacts.** Water quality and wetland impacts associated with this proposal will require a Virginia Water Protection Permit issued by the DEQ Tidewater Regional Office pursuant to Virginia Code §62.1-44.15:5. A wetland delineation utilizing methods outlined in the 1987 Corps delineation manual should be prepared and confirmed by the Corps. Both the delineation and the subsequent confirmation by the Corps should clearly identify the presence of all wetlands, not just those deemed "jurisdictional" under the Clean Water Act. A Joint Permit Application may be obtained from and submitted to VMRC which serves as a clearinghouse for the joint permitting process involving the VMRC, DEQ, Corps, and local wetlands boards. For additional information and coordination regarding the VWPP, contact Bert Parolari (DEQ-TRO) at (757) 518-2166.

**2. Subaqueous Lands.** Any subaqueous lands impacts may be subject to the permitting requirements from the Virginia Marine Resources Commission (VMRC), pursuant to Section 28.2-1200 *et seq.* of the *Code of Virginia*. Any impacts will be reviewed by VMRC

with the submission of the Joint Permit Application. For additional information, contact Elizabeth Murphy, VMRC at (757) 247-8027.

### **3. Erosion and Sediment Control and Stormwater Management.**

**3(a) Erosion and Sediment Control and Stormwater Management.** Future development must be conducted in compliance with *Virginia's Erosion and Sediment Control Law* (Virginia Code 10.1-567) and *Regulations* (4 VAC 50-30-30 *et seq.*) and *Stormwater Management Law* (Virginia Code 10.1-603.5) and *Regulations* (4 VAC 3-20-210 *et seq.*). Activities that disturb 2,500 square feet or more of land would be regulated by VESCL&R and VSWML&R. The Army is encouraged to contact DCR's Suffolk Regional Office at (757) 925-2468, for assistance with developing or implementing any future ESC plans to ensure project conformance. ESC and SWM plan review and approval for future private development should be requested through the City of Hampton.

**3(b) Virginia Stormwater Management Program General Permit for Stormwater Discharges from Construction Activities.** For projects involving land-disturbing activities 2,500 square feet or more in Chesapeake Bay Preservation Areas, project applicants are required to develop a project-specific stormwater pollution prevention plan and apply for registration coverage under the Virginia Stormwater Management Program General Permit for Discharges of Stormwater from Construction Activities. Specific questions regarding the Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

**4. Chesapeake Bay Preservation Areas.** The Army must ensure that disposal and reuse activities located within lands analogous to Chesapeake Bay Preservation Areas are consistent with the *Chesapeake Bay Preservation Area Designation and Management Regulations* (9 VAC 10-20 *et seq.*), to be consistent with the coastal lands management enforceable policy of the VCP. Upon transfer, state and privately held lands would be subject to CBPA designation by the City of Hampton. For additional information and coordination, contact Joan Salvati, DCR-DCBLA, at (804) 225-3440.

**5. Air Quality Regulations.** The disposal and reuse alternatives may be subject to air regulations administered by the Department of Environmental Quality. The following sections of Virginia Administrative Code are applicable:

- 9 VAC 5-40-5490 *et seq.* for asphalt paving operations;
- 9 VAC 5-50-60 *et seq.* governing fugitive dust emissions;
- 9 VAC 5-130 *et seq.* for open burning.

Fuel-burning equipment may require permitting under regulations (9 VAC 5-80-2000 *et*



seq.) for new and modified sources. For additional information and coordination, contact Jane Workman, DEQ-TRO at (757) 518-2112. Also, contact the Accomack County for any local requirements on open burning.

**6. Solid and Hazardous Wastes.** All solid waste, hazardous waste, and hazardous materials must be characterized and managed in accordance with all applicable federal, state, and local environmental regulations. Some of the applicable state laws and regulations are:

- *Virginia Waste Management Act* (Code of Virginia Section 10.1-1400 *et seq.*);
- *Virginia Hazardous Waste Management Regulations (VHWMR)* (9 VAC 20-60);
- *Virginia Solid Waste Management Regulations (VSWMR)* (9 VAC 20-80); and
- *Virginia Regulations for the Transportation of Hazardous Materials* (9 VAC 20-110).

Some of the applicable Federal laws and regulations are:

- *Resource Conservation and Recovery Act (RCRA)* (42 U.S.C. Section 6901 *et seq.*);
- Title 40 of the Code of Federal Regulations; and
- U.S. Department of Transportation Rules for Transportation of Hazardous materials (49 CFR Part 107).

**6(a) Asbestos-Containing Material.** It is the responsibility of the owner or operator of a demolition activity, prior to the commencement of the demolition, to thoroughly inspect the affected part of the facility where the operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos containing material (ACM). Upon classification as friable or non-friable, all waste ACM shall be disposed of in accordance with the Virginia Solid Waste Management Regulations (9 VAC 20-80-640), and transported in accordance with the Virginia regulations governing Transportation of Hazardous Materials (9 VAC 20-110-10 *et seq.*). Contact the DEQ Waste Management Program for additional information, (804) 698-4021, and the Department of Labor and Industry, Ronald L. Graham at (804) 371-0444.

**6(b) Lead-Based Paint.** If applicable, the proposed project must comply with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, and with the Virginia Lead-Based Paint Activities Rules and Regulations. For additional information regarding these requirements contact the Department of Professional and Occupational Regulation, David Dick at (804) 367-8588.

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**7. Storage Tanks.** If evidence of a petroleum release is discovered as a result of disposal and reuse activities, contact the DEQ Tidewater Regional Office, Lynne Smith at (757) 518-2055 or Gene Siudyla at (757) 518-2117.

The use of portable fuel AST(s) with a capacity of greater than 660 gallons, the tank(s) must be registered with DEQ using *AST Registration Form 7540-AST*. Tank registration may be accomplished by contacting Tom Madigan, DEQ Tidewater Regional Office, at (757) 518-2115 or by e-mail at [temadigan@deq.virginia.gov](mailto:temadigan@deq.virginia.gov).

**8. Protected Species.** Disposal and reuse activities should be coordinated closely with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and the Virginia Department of Game and Inland Fisheries to ensure that impacts on protected species including shorebirds, sea turtles and marine mammals are adequately avoided and minimized. For additional information, contact Amy Ewing, DGIF at (804) 367-2211.

**9. Historic and Archaeological Resources.** In accordance with Section 106 of the *National Historic Preservation Act*, as amended, and its implementing regulation 36 CFR 800, this proposed action must be carried out in compliance with the Programmatic Agreement between the Army, DHR, Advisory Council, FMFADA, the Commonwealth and NPS. For additional information and coordination, contact Marc Holma, DHR at (804) 367-2323, ext. 114.

**10. Regulations for Waterworks Operation.** All utility work involving installation of new water lines and appurtenances must comply with the Waterworks Regulations and all applicable standards of the locality. The applicant should contact the public utility for specific procedures and to obtain any necessary permits. For more information, contact the Department of Health's Southeast Virginia Field Office at (757) 683-2000.

**11. Sewage Regulations.** If applicable, contact James McConathy, DEQ-TRO at (757) 518-2165 to ensure compliance with Virginia's sewerage regulations.

Thank you for the opportunity to review the Draft Environmental Impact Statement and Federal Consistency Determination for the BRAC 2005 Disposal and Reuse of Fort Monroe in the City of Hampton. Detailed comments of reviewing agencies are attached for your review. Please contact me at (804) 698-4325 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

Ms. Robin Mills  
BRAC 2005 Disposal and Reuse of Fort Monroe

Ellie Irons, Manager  
Office of Environmental Impact Review

#### Enclosures

Ec: Michelle Hollis, DEQ-TRO  
Paul Kohler, DEQ-Air  
Kotur Narasimhan, DEQ-Waste  
Dave Davis, DEQ-Water  
Robbie Rhur, DCR  
Tony Watkinson, VMRC  
Amy Ewing, DGIF  
Keith Tignor, VDACS  
Matt Heller, DMME  
Barry Matthews, VDH  
Todd Groh, VDF  
Melanie Allen, VDOT

Cc: Roger Kirchen, DHR  
James Oliver, City of Hampton  
Dwight Farmer, HRPDC